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LETTER REQUESTING REFUND

Applicant : Jae Keol Rhee, et al.
App. No : 10/596,412
Filed : June 13, 2006
For : NOVEL OXAZOLIDINONE
DERIVATIVES
Examiner : Morris, Patricia L.
Art Unit : 1625
Conf. No. 6355

Mail Stop 16

Commissioner for Patents

P.O. Box 1450

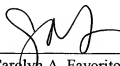
Alexandria, VA 22313-1450

Sir:

An Interview Summary and Communication Re: Appeal having a Notification Date of December 7, 2009 (copy attached) indicated that the Notice of Appeal filed on September 14, 2009 was untimely filed because prior Office Actions were vacated. Thus, Applicants request a refund of the fees paid, as calculated below. Please credit our Deposit Account No. 11-1410.

| | Paid | Refund |
|------------------|--------------|---------------|
| Notice of Appeal | \$540 | \$540 |
| TOTAL | \$540 | \$540 |

Dated: December 7, 2009



Carolyn A. Favorito
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/596,412 | 06/13/2006 | Jac Keol Rhee | TRIUS.002NP | 6355 |

20995 7590 12/07/2009
KNOBBE MARTENS OLSON & BEAR LLP
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|----------|
| EXAMINER |
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MORRIS, PATRICIA L.

| | |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1625

| | |
|-------------------|---------------|
| NOTIFICATION DATE | DELIVERY MODE |
|-------------------|---------------|

12/07/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartere@kmob.com
eOAPilot@kmob.com

| | | | |
|--------------------------|------------------------|---------------------|--|
| Interview Summary | Application No. | Applicant(s) | |
| | 10/596,412 | RHEE ET AL. | |
| | Examiner | Art Unit | |
| | JULIE BURKE | 1600 | |

All participants (applicant, applicant's representative, PTO personnel):

(1) JULIE BURKE.

(3) Carolyn Favorito.

(2) Joe Mallon.

(4) ____.

Date of Interview: 19 November 2009.

Type: a) ☒ Telephonic b) ☐ Video Conference
 c) ☐ Personal (copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: ____.

Claim(s) discussed: none.

Identification of prior art discussed: none.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

| | |
|----------|----------------------------|
| 11/19/09 | Julie Burke/ TC1600 QAS |
|----------|----------------------------|

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant called to clarify the status of several actions in terms of potential Patent Term Adjustment. The Office has mailed out a series of Office actions, each of which has been or hereby is vacated from the record for the following reasons.

The Restriction Requirement mailed 3/6/08 is hereby vacated from the record as it was found to be improper in the Petition decision mailed 10/8/09.

The Office action mailed 6/23/08 was vacated by the Office action mailed 12/16/09- see page 2, line 2.

The Office action mailed 12/16/09 is hereby vacated from the record because it was improper and subsequently replaced by the Office action of 1/29/09/

The Office action mailed 1/29/09 was vacated by the Office action mailed 2/11/09, see page 2 line 1

The Supplemental Office action mailed 2/11/09 is hereby vacated as incomplete, in view of the fact that the restriction requirement was found to be improper. Accordingly, not all claims which should have been examined on the merits had been addressed in the Supplemental Office action dated 2/11/09.

The final Office action mailed 8/13/09 was vacated in the petition decision mailed 10/08/09.

Because all Office actions up to and including the final Office action have been vacated from the record, the advisory action mailed 9/4/09, which prevented entry of the amendment filed 8/27/09, was improper and is hereby vacated from the record.

Finally, the Notice of Appeal filed on 9/14/09 is considered untimely under 37 CFR 41.31(a) because the claims have not been rejected twice on the merits. See accompanying Form PTOL-461. Applicants are encouraged to request a refund for the fees paid for filing the Notice of Appeal

The Office regrets the delays and inconveniences which occurred during prosecution of this application and hopes this helps simplify the processing of Applicants PTA adjustments..

Communication Re: Appeal

Application No.

10/596,412

Examiner

JULIE BURKE

Applicant(s)

RHEE ET AL.

Art Unit

1600

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 14 September 2009 is not acceptable because:

- (a) ☒ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

11/20/09

/Julie Burke/
TC1600 QAS